Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
BellSouth Corporation's Petition	)	WC Docket No. 05-277
For Waiver	)	

COMMENTS OF THE VERIZON TELEPHONE COMPANIES

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October 18, 2005

SUMMARY

The world has changed. Competition for all kinds of telephone services, including long distance services, is robust and vigorous. As a result, it makes no sense to continue applying regulations designed for an entirely different era. Indeed, such regulations are affirmatively inimical to the Commission's goals, and contrary to the public interest.

Where end users once bought local service from their local phone company and long distance service from one of a number of interexchange carriers, they now can choose among a variety of all distance services offered by a wide range of intermodal providers. Cable companies, wireless carriers, and VoIP providers all offer services that compete with traditional wireline telephony and long distance services.

In light of the extensive competition for long distance service, applying outmoded regulations is unnecessary and contrary to the public interest. The Commission has long recognized that competition is the best form of "regulation." Consumers in all parts of the country will benefit from removing outmoded and artificial regulatory handicaps from the BOCs. Conversely, imposing tariffing, price cap, and accounting regulations on BOCs' long distance services, but not on other competitors, will harm the public interest. The pending acquisition of MCI by Verizon does not change these facts. Given the extremely competitive nature of long distance services today, that acquisition will not reduce competition, and there is no reason to treat Verizon differently from BellSouth after the sunset of section 272 requirements.

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COMMENTS OF THE VERIZON TELEPHONE COMPANIES[1]

As BellSouth notes, the world has changed.[2] Competition for all kinds of telephone services, including long distance services, is robust and vigorous. As a result, it makes no sense to continue applying regulations designed for an entirely different era. Indeed, such regulations are affirmatively inimical to the Commission's goals, and contrary to the public interest. The Commission, therefore, should grant BellSouth's petition. In addition, the Commission should waive the specified rules for all BOCs as their section 272 requirements sunset.

1. There is extensive and vigorous competition for both local and long distance services offered by BOCs. Over the last decade, the telecommunications market has undergone a fundamental revolution. Where end users once bought local service from their local phone company and long distance service from one of a number of interexchange carriers, they now can choose among a variety of all distance services offered by a wide range of intermodal providers. Because consumers increasingly view wireless, cable telephony, and VoIP as viable alternatives to wireline service, wireline

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[1] The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

[2] *See* BellSouth Petition, WC Docket No. 05-277, at 12-16 (filed Sept. 19, 2005).

access lines are now falling at a 5.2 percent annualized run-rate.[3] Industry experts forecast that cable and VoIP will have almost 7 million subscribers by year end and that in five years 45 percent of U.S. households will either be wireless only or will use VoIP to make their calls.[4]

a. Cable. Cable companies began providing mass market voice telephone service over their networks using circuit switches and are now aggressively rolling out VoIP service to their customers in almost all their service territories. By the end of 2003, cable companies offered circuit-switched voice telephone service to more than 15 percent of homes nationwide; by the end of 2004, they offered telephony services (VoIP or switched) to at least 32 percent of U.S. households. The figure is expected to increase to nearly 90 percent by 2007.[5] Some major cable operators, including Time Warner Cable and Cablevision, already offer telephony services in all of their footprint, while others, including Cox and Comcast, plan to reach that milestone by year-end 2006 at the latest.[6]

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[3] *See* Qaisar Hasan and May Tang, Buckingham Research Group, *The Last Mile – Monitoring Quarterly Trends in Telecommunications*, Video and Data at 1 (Aug. 18, 2005).

[4] *See* John Hodulik and Aryeh Bourkoff, UBS Investment Research, *Broadband Hit by Seasonality as VoIP Ramps* at 15 (Aug. 16, 2005); Frank G. Louthan, IV, Raymond James & Associates, Inc., *Reassessing the Impact of Access on Wireline Carriers* at 2 (July 11, 2005).

[5] Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth* at 10 Exh. 11 (July 15, 2005).

[6] *See* Craig Moffett, *et al.*, Bernstein Research Call, *Cable and Telecom: VoIP Deployment and Share Gains Accelerating; Will Re-Shape Competitive Landscape in 2005*, (Dec. 7, 2004); *see also*, Thomson StreetEvents, *TWX – Q4 2004 Time Warner Inc. Earnings Conference Call*, Conference Call Transcript, (Feb. 4, 2005) (statement of Time Warner Inc. CFO Wayne Pace); Cablevision News Release, *Cablevision Systems Corporation Reports First Quarter 2005 Results* (May 5, 2005), *available at* http://www.findarticles.com/p/articles/mi_m0EIN/is_2005_May_5/ai_n13672660; *see*

As one Wall Street analyst has noted: "By the end of 2006, [VoIP] will be offered almost ubiquitously by cable operators."[7]

As a result, there has been rapid growth in the number of cable telephony subscribers. According to FCC survey data, as of January 2004, approximately 13 percent of customers that were offered cable telephony were subscribing to the service.[8] Some cable operators report that, in some areas, their telephony services have been purchased by as much as 20-40 percent of their cable subscribers.[9] Collectively, cable companies are expected to serve nearly six million lines by the end of 2005 and more than 10 million by year-end 2006.[10] Analysts expect that cable companies will achieve an overall penetration rate of 15-20 percent within the next five years.[11]

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also Comcast, presentation at the Bear Stearns 18th Annual Media, Entertainment & Information Conference at 10-11 (Mar. 2, 2005).

[7] Craig Moffett, *et al.*, Bernstein Research Weekly Notes, *Cable and Telecom: VoIP Will Reshape Competitive Landscape in 2005* (Dec. 17, 2004).

[8] *See* Report on Cable Industry Prices, *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, 20 FCC Rcd 2718, ¶ 37 & Table 10 (2005).

[9] *See, e.g.*, Chris Bowick, SVP Engineering & CTO, Cox Communications, *Cox Communications: Distribution at Its Best*, presentation at the Bear Stearns 17th Annual Media, Entertainment & Information Conference at 19 (Mar. 8, 2004); *Q1 2004 Cox Communications Inc. Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 042904as.714 (Apr. 29, 2004) (Pat Esser, Cox executive vice president & COO); Cox Communications, *News Releases: Cox Brings Telephone to Five New Markets in '05* (Mar. 8, 2005) ("In some communities, such as Omaha, Neb. and Orange County, Calif., 40 percent of consumers subscribe to Cox Digital Telephone"), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=683077&.

[10] *See* Frank Governali, *et al.*, Goldman Sachs, *Americas: Telecom Services* (Jan. 12, 2005).

[11] *See, e.g.*, Douglas S. Shapiro, *et al.*, Banc of America Securities Research Brief, *Battle for the Bundle: Mapping the Battlefield, Our First Report from the Front*, at 3 (June 14, 2005) ("Cable should have 19.8 million telephony subs by 2010, or 18% penetration of homes passed"); *see also* Frank G. Louthan IV & Ben Gordon, Raymond

For example, each of the four largest cable companies in Verizon's footprint has made substantial inroads in providing telephony service:

- *Time Warner*: Time Warner now offers VoIP in all 31 of its markets, passing a total of more than 19 million homes.[12] It added over 240,000 net new customers in the second quarter of 2005, about sixty percent more than it added in the first quarter.[13] It is now adding more than 18,000 net new subscribers per week.[14] For example, in Portland, Maine up to 18 percent of homes passed are subscribing to Time Warner's VoIP service.[15]

- *Cablevision*: Cablevision now offers telephony service to all of the homes it passes and is already providing service to more than 8 percent of those homes.[16] Analysts expect that Cablevision's penetration rate will double to 16 percent by the end of the year.[17] Cablevision added more than 100,000 voice telephony customers in the

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James Equity Research, *Reassessing the Impact of Access Lines on Wireline Carriers*, at 1 (July 11, 2005) (estimating that cable and standalone VoIP will reach over 20 percent of residential households by 2010); Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth* at 1 (July 15, 2005) ("[W]e estimate that each of the RBOCs will have lost 17% to 19% of their residential lines to cable telephony by 2010"); *See* Frank Governali, *et al.*, Goldman Sachs, *Americas: Telecom Services*, January 12, 2005.

[12] *See* Thomson StreetEvents, *TWX—Q4 2004 Time Warner Inc. Earnings Conference Call*, Conference Call Transcript (Feb. 4, 2005) (statement of Time Warner Inc. CFO Wayne Pace); Time Warner Cable, *About Us Company Highlights*, *available at* http://www.timewarnercable.com/corporate/aboutus/companyhighlights.html.

[13] Time Warner Inc., Presentation of Wayne Pace, CFO, *Time Warner Inc.: Second Quarter 2005 Results* (Aug. 3, 2005).

[14] Time Warner Press Release, Time Warner Inc. Reports Second Quarter 2005 Results (Aug. 3, 2005), *available at* http://biz.yahoo.com/bw/050803/35362.html?.v=1.

[15] *Time Warner Inc. at Banc of America Securities Media, Telecommunications and Entertainment Conference – Final*, FD (Fair Disclosure) Wire, Transcript 033005ac.759 (Mar. 30, 2005) (quoting Time Warner Cable Chairman & CEO Glenn Britt).

[16] Cablevision News Release, *Cablevision Systems Corporation Reports First Quarter 2005 Results* (May 5, 2005), *available at* http://www.findarticles.com/p/articles/mi_m0EIN/is_2005_May_5/ai_n13672660; Douglas S. Shapiro, *et al.*, Banc of America Securities Research Brief, *Battle for the Bundle: Mapping the Battlefield, Our First Report from the Front*, at 4 (June 14, 2005); Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth* at 3 (July 15, 2005).

[17] Jeffrey Halpern, et al., Bernstein Research Call, *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth* at 3 (July 15, 2005).

second quarter of 2005 and now has approximately 478,000 customers.[18] Cablevision recently reported that it is "growing at a rate of approximately 1% of [its] homes passed per month."[19]

- *Comcast*: Comcast recently announced that it already has over 3.5 million homes marketable with its Digital Voice offering.[20] Comcast plans to expand its VoIP deployment to 15 million homes passed by the end of 2005, and to all the 40 million homes it passes by the end of 2006.[21] Comcast expects to add one million VoIP customers next year and to achieve 20 percent penetration within five years.[22]

- *Cox*: Cox, which already offers circuit-switched voice telephone service and VoIP to 6.8 million of the 10.7 million homes it passes nationally, will roll out VoIP service to five more markets this year to reach a total of 70 percent of homes passed.[23] During the second quarter of 2005, it added 89,000 digital voice customers, ending the quarter with over 1.5 million telephone customers.[24]

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[18] Cablevision Press Release, *Cablevision Systems Corp. Reports Second Quarter 2005 Results* (Aug. 9, 2005), *available at* http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=CVC&script=410&layout=6&item_id=741151.

[19] *Q2 2005 Cablevision Systems Corp. Earnings Conference Call - Final*, Transcript 080905ag.778, FD (Fair Disclosure) Wire (Aug. 9, 2005).

[20] Thomson StreetEvents, *CMCSA – Q2 2005 Comcast Corporation Earnings Conference Call – Final Transcript* at 5 (Aug. 2, 2005).

[21] *See* Comcast, presentation at the Bear Stearns 18th Annual Media, Entertainment & Information Conference at 10-11 (Mar. 2, 2005).

[22] *See* Thomson StreetEvents, *Q2 2005 Comcast Corporation Earnings Conference Call*, Conference Call Transcript at 5 (Aug. 2, 2005); Thomson StreetEvents, *CMCSA – Q4 2004 Comcast Corporation Earnings Conference Call, Final Transcript* (Feb. 3, 2005) (Comcast COO & President Steve Burke: "[W]hen you look at what Cox, and more recently Cablevision, and others have done in this business, we think the 20 percent penetration is very reasonable within a five-year time period").

[23] Cox Communications Inc. Summary of Operating Statistics, *attached to* Cox News Release, *Cox Communications Announces Second Quarter and Year-to-Date Financial Results for 2005* (Aug. 9, 2005), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=741321&; Cox News Release, *Cox Names New 2005 Telephone Markets* (Aug. 1, 2005), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=737725&.

[24] Cox News Release, *Cox Communications Announces Second Quarter and Year-to-Date Financial Results for 2005* (Aug. 9, 2005), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=741321&.

Moreover, cable modem service has a significant lead over DSL in broadband subscribership. As a result, cable operators will be able to take advantage of their lead in video and data to grow telephony.

b. Wireless. Wireless voice service is a close alternative for wireline service, is priced similarly, and thus competitively disciplines wireline services. As a result, wireless companies continue to increase their minutes of use and subscriptions at a double-digit pace, while wireline services are experiencing declines in number of access lines and minutes.

Along with cable, wireless service is currently the principal alternative to traditional telephony.[25] A number of national wireless providers including Verizon Wireless, Cingular, Sprint, Nextel, T-Mobile, along with significant regional competitors, compete with landline service. As the FCC recently noted, wireless service has grown so spectacularly that of 362 million voice lines counted by the FCC at the end of 2004, 181.1 million – more than 50 percent – are wireless.[26]

Both consumers and suppliers[27] view wireless as an alternative to wireline services, resulting in wireless putting competitive pressure on wireline. Wireless

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[25] *See* David W. Barden, et al., Banc of America Securities, *Setting the Bar: Establishing a Baseline for Bell Consumer Market Share* at 5 (June 14, 2005).

[26] *See Federal Communications Commission Release Data on Local Telephone Competition* (rel. July 8, 2005), *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0705.pdf.

[27] *See Applications of Nextel Communications, Inc. and Sprint Corp. for Transfer of Control*, WT Docket No. 05-63, at 30, 31 (filed Feb. 8, 2005) (the combined Sprint/Nextel "will position its services as a competitive alternative to wireline service, to the benefit of intermodal competition and consumers," and "will have a greater ability to compete for business that historically has gone to wireline companies"); see also AT&T Corp., Form 10-K (Mar. 15, 2004) ("Consumer long distance voice usage is declining as a result of substitution to wireless services, internet access and email/instant messaging

displacement occurs on at least three levels. First, wireless minutes generally displace wireline minutes. Second, because of the prevalence of wireless phones, customers buy fewer second or third lines than they would absent competition from wireless. Third, an increasing number of customers use only wireless minutes by "cutting the cord."

Consumer surveys reveal that wireless service has displaced 60 percent of long distance and 36 percent of local calling from landlines in households with wireless phones.[28] A Yankee Group survey found that approximately 10 percent of wireless users do not have a landline phone at all.[29] Industry trends and market demographics suggest that this competition will only intensify.[30] Indeed, some Wall Street analysts "look for wireless substitution to be the largest displacer of access lines over the next five years."[31]

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services, particularly in the 'dial one' long distance, care and operator services segments") *available at* http://www.sec.gov/Archives/edgar/data/5907 /000095012304003304/y92576e10vk.txt; *see also* MCI, Inc., Form 10-K (Apr. 29, 2004) ("[W]ireless telephone companies . . . have increased their network coverage, improved service quality, started to provide bundled wireless products and lowered prices to end-users. As a result, customers are beginning to substitute wireless services for basic wireline service causing these companies to gain market share from providers of wireline voice communications"), *available at* http://www.sec.gov/Archives/edgar/data/723527 /000119312504074088/d10k.htm; Petition to Deny of Qwest Communications Int'l, Inc., WC Docket No. 05-65 at 35 (filed Apr. 25, 2005) ("Consumers have demonstrated that they are increasingly willing to replace our wireline service with the wireless services of our competitors").

[28] Keith Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services*, at 7 (July 27, 2005).

[29] *Id.* at 5.

[30] *See, e.g.,* Blake Bath, Lehman Brothers, *Wireless Services: Industry Overview, Raising '06-'08 Wireless Net Adds by 50%*, at 3 (June 16, 2005) (increasing by 50 percent estimates of net wireless subscriber additions through 2008 and predicting that wireline displacement, penetration of the youth market, and expanded wireless data offerings will generate "12-18 million new wireless subscribers per year for the next several years," resulting in 85 percent market penetration by 2010).

[31] F. Louthan, *et al.*, Raymond James, *VZ, SBC, BLS, Q: Cable Threat Comparison for RBOCs* at 2 (July 11, 2005); V. Shvets, *et al.*, Deutsche Bank, *The Hotline: 1Q05 Wireline Post-Mortem* at p. 4 (May 9, 2005) ("wireless remains the single

The wireless carriers' all-distance plans, beginning in 1999 and 2000, led to massive displacement away from landline long distance calls and reversed what had been a steady increase in wireline long distance minutes. "Thanks to unlimited night and weekend minutes . . . cellphone plans are the method of choice when it comes to long distance calling from home."[32]

The absolute increase in wireless minutes has been explosive. By 2004, wireless minutes of use had risen to 1.1 trillion, an increase of 32.7 percent from 2003 and more than 300 percent since 2000.[33] This increased usage has been accompanied by a rapid erosion in traditional distinctions between the locations from which subscribers use fixed and mobile service, as subscribers increasingly use their mobile devices at stationary locations from which wireline alternatives would readily be used. For example, a Yankee Group survey found that the percentage of wireless usage in the home by mobile phone users grew from 11.6 percent to 24.1 percent of total usage between 2001 and 2005.[34] The percentages do not fully convey the magnitude of the actual growth in the use of

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biggest killer of both total and retail access lines" and "the rate of wireless cannibalization has accelerated in the last four quarters . . . . Although not all numbers are in yet, it is likely that close to [one million] access lines were lost to wireless [in the first quarter of 2005], maintaining the ratio of around 50% of 'kills'").

[32] W. Mossberg, *The Mossberg Solution: Turning Your Home Phone into A Cellphone – Call-Forwarding Devices Let You Use Cellular Service on a Traditional Phone*, WALL ST. J., Dec. 3, 2003 at D6.

[33] *See* CTIA-The Wireless Association, Background on CTIA' s Semi-Annual Wireless Industry Survey, *Reported Wireless Minutes of Use Exceed One Trillion in 2004* at 8 (2005), *available at* http://files.ctia.org/pdf/CTIAYearend2004Survey.pdf ("CTIA Semi-Annual Survey"); *see also* Federal Communications Commission, *9th Annual CMRS Competition Report*, (rel. September 28, 2004) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-216A1.pdf.

[34] Keith Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services*, at 5 (July 27, 2005). During the same time period, wireless usage in the office grew from 5.5 percent to 9.7 percent of total usage. *Id.*

wireless in the home. When applied to the total minutes of wireless use, these percentages mean that wireless minutes consumed at home soared from approximately 28 billion in 2001 to approximately 297 billion in 2004.[35] As the report notes, the actual growth in minutes that displace home calling may be much greater, because many wireless users make calls from their cars that they otherwise would have made at home.[36]

During the same period that wireless minutes have grown rapidly, wireline minutes have declined. The FCC's own data show that average residential wireline toll minutes have declined rapidly for the industry as a whole – from an average of 149 minutes per month in 1997, down to only 90 minutes per month in 2002 (and undoubtedly much less today, given the increase in wireless and decrease in wirelines).[37] In total, consumers reduced the number of long distance minutes of use on landline phones by 40 percent between 1997 and 2002.[38] Not surprisingly in light of these trends, data from the Telecom Industry Association reveal that revenue from wireless services has outpaced revenue from wireline long distance since 2003 and will surpass revenue from landline local exchange calls by 2007.[39]

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[35] *Id.* at 1, 5. The minutes of usage at home figure for 2004 is calculated by applying the 2005 usage at home percentage to total wireless minutes for 2004.

[36] *Id.* at 5.

[37] *See* Indus. Anal. & Tech. Div., WCB, FCC, *Statistics of the Long Distance Telecommunications Industry*, Table 20 (May 2003) ("May 2003 Long-Distance Report") (includes: IntraLATA-Intrastate, InterLATA-Intrastate, IntraLATA-Interstate, InterLATA-Interstate, International, Others (toll-free minutes billed to residential customers, 900 minutes, and minutes for calls that could not be classified)).

[38] *See id.*

[39] *See TIA*, Total Telecom, *U.S. Telecoms Services Revenue to Rise 3.6% in 2005* (Mar. 4, 2005) (citing TIA's 2005 Market Review and Forecast).

Another manifestation of wireless competition is that a growing share of wireless subscribers are abandoning their wireline phones altogether – "cutting the cord." As of year-end 2004, approximately 7-10 percent of wireless users had given up their landline phones altogether,[40] up from approximately 2 percent in 2001.[41] Analyst estimates are that primary line displacement could total 5 million lines in 2005.[42] As a result, analysts predict that the number of wireless-only users will grow to 20-25 percent of the market

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[40] Keith Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services*, at 5 (July 27, 2005); *see also* Michael Balhoff, Managing Director, Telecommunications Group, Legg Mason, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004) *available at* http://energycommerce.house.gov/108/Hearings/02042004hearing1164/Balhoff1850.htm; *see also,* Adam Quinton, Managing Director & First Vice President, Co-Head of Global Telecom Services Research, Merrill Lynch, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004) *available at* http://energycommerce.house.gov/108/Hearings/02042004hearing1164 /Quinton1852.htm; Blake Bath, Lehman Brothers, *Final UNE-P Rules Positive for RBOCs*, at Figure 2 (Dec. 10, 2004); D. Barden, J. Bender, and R. Dezego, Banc of America Securities, *Setting the Bar: Establishing a Baseline for Bell Consumer Market Share*, at 1 (Jun. 14, 2005). One analyst puts the number even higher, stating that "[b]etween 10% and 15% of the total market is now using wireless exclusively." *Dialing into Wireless Stocks; As Wireless Builds Momentum Against Wireline, S&P's Kenneth Leon Points to the Best Companies in Service and Equipment*, Business Week Online (Mar. 10, 2005).

[41] Blake Bath, Lehman Brothers, *Wireless Services Industry Overview: Raising '06-'08 Wireless Net Adds by 50%* at Fig. 2 (June 16, 2005).

[42] *See* Catherine Cosentino, Standard & Poor's, *FCC Data Supports Standard & Poor's View of Local Telephony Competition* at 1-2 (Feb. 4, 2005) ("There also appears to be some traction developing for the wireless substitution model. According to FCC data, . . . about 3.0 million lines (30% of wireless subscriber additions for the first six months of 2004) may actually represent users that have completely severed the wireline cord. Extrapolating from these statistics, wireless substitution could represent at least 5 million of the wireless subscriber additions for 2005, assuming 10% growth in wireless penetration"); V. Shvets, *et al.*, Deutsche Bank, *4Q04 Review: Wireless OK . . . RBOCs Fare Poorly* (Feb. 28, 2005) ("wireless cannibalization" accounted for approximately 60-70 percent of "primary residential access line loss," which amounts to "more than 1M lines lost per quarter").

by 2010.[43] A recent Harris Interactive survey found that 39 percent of current landline customers are interested in going wireless altogether in the next two years.[44] And even if they are not replacing their landline phone altogether, at least 14 percent of U.S. consumers now use their wireless phone as their primary phone.[45]

Wireless prices have declined nearly 80 percent over the last decade.[46] The innovation of offering large buckets of minutes for a fixed price has led to substantially lower revenues per minute, but because of the overall growth in use, U.S. carrier average revenue per user actually increased. Customers continue to migrate to these large-bucket plans, which lead to increased displacement of wireline minutes by wireless. Other forms of wireless technology are also poised to hit the market. For example, Sprint is running trials in five cities of Telular's technology, which provides a wireless unit at home that enables the family phone number to ring on the home phone as well as mobile phones.[47]

Wireless and wireline prices for similar service offerings are now comparable. According to one analyst, "[w]ireless pricing dropped below wireline pricing in 2003 for

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[43] D. Barden, J. Bender, and R. Dezego, Banc of America Securities, *Setting the Bar: Establishing a Baseline for Bell Consumer Market Share*, at 4 (Jun. 14, 2005); F. Louthan and B. Gordon, *Reassessing the Impact of Access Lines on Wireline Carriers*, at 1 (July 11, 2005) (predicting 25 percent wireless substitution by 2010).

[44] *See* National Consumers League, *National Consumers League Releases Comprehensive Survey about Consumers and Communications Services* (July 21, 2005) *at* http://nclnet.org/news/2005/comm_survey_07212005.htm.

[45] *See* C. Wheelock, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Feb. 2004) ("14.4% of US consumers currently use a wireless phone as their primary phone").

[46] *CTIA SemiAnnual Wireless Survey*, 2005.

[47] Telular Corporation, *Press Release: Telular Corporation Announces Market Trial with U.S. Wireless Carrier for Phonecell Fixed Wireless Terminal* (Oct. 20, 2004), *available at* http://www.telular.com/profile/release_display.asp?ID=187.

the first time."[48] The services are highly cross-elastic. An econometric analysis by the Competitive Enterprise Institute found that "a one percent increase in wireline prices would result in a nearly two percent increase in wireless demand. In other words, if wireline carriers were to increase their prices, wireless service providers would gain a substantial number of subscribers."[49] Just as important, the wireless carriers would gain a substantial number of minutes.

Finally, entirely new forms of non-traditional wireless technologies will continue to increase consumer choices when making voice calls. WiFi is already a well-documented and growing phenomenon. So-called "hot spots" are proliferating; one company that mapped parts of the Boston metropolitan area found 70,000 access points there alone.[50] WiMAX, a wireless technology that is being driven by deep-pocketed

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[48] V. Grover, Neeham, *New Year' s Resolution – Avoid the Bells*, at 1 (Dec. 29, 2003).

[49] Stephen B. Pociask, Competitive Enterprise Institute, *Wireless Substitution and Competition: Different Technology but Similar Service – Redefining the Role of Telecommunications Regulation* at 15 (Dec. 15, 2004) *available at* http://www.cei.org/pdf/4329.pdf.

[50] *Start-up Uses WiFi Signals to Pinpoint Location,* Network World at 19 (June 22, 2005). These developments have in turn sparked the development of new WiFi-enabled phones. In January 2005, UTStarcom, Inc., announced the debut of its F1000 portable Wi-Fi handset for the U.S. market, which it will soon provide in partnership with Vonage. Other manufacturers such as Motorola and Nokia are expected to offer WiFi phones in 2006. Dual-mode Wi-Fi/cellular phones, which offer cheap calls inside hotspots and reliable coverage everywhere else, also will be on the market. Other forms of hybrid phones are also planned. Skype has reached an agreement with Motorola that aims to embed Skype software in a number of Motorola WiFi-, 3G-, and even WiMax-enabled mobile phones in the near future. Boingo Wireless Press Release, *Skype Users Can Add 18,000 Boingo Hot Spots Via New 'Skype Zones – Powered by Boingo' Service* (July 12, 2005), *available at* http://www.uniindia.com/unilive/unisite.nsf/0 /475ac567e88bb2486525703f0041acc2?OpenDocument.

Silicon Valley companies such as Intel and Cisco, also is being touted as a new and fierce competitor to existing wireless and wireline technology.[51]

Wireless voice competition will also come from the high-speed data networks currently in service and being expanded across the country, which will enable customers to make wireless VoIP calls. Verizon Wireless and Sprint both are rolling out EV-DO networks that provide high-speed connectivity, and Cingular is following suit with a GSM equivalent.[52] Research in Motion is also preparing to release a version of its popular BlackBerry mobile communicator featuring VoIP capabilities. Cable companies also will begin to offer wireless, adding to the bundles they currently offer. While initially cable is likely to resell wireless, enhancements are likely to create genuine fixed wireless integration.[53] Such integration would allow cable telephony and wireless to share minutes of use and devices giving consumers a home phone and a mobile phone in a single package with near seamless interchangeability.[54]

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[51] Telecommunications Americas, *WiMAX: Coming to an Xbox Near You?* at 8 (July 2005), *available at* http://www.telecoms-mag.com/search/article.asp?Id=AR_908&SearchWord.

[52] Bill Draper, Sprint Rolls Out Wireless Internet Plan, Associated Press (July 8, 2005) *available at* http://www.technewsworld.com/story/44480.html; Michael Rollins, *et al.*, Citigroup Smith Barney Industry Note, *Cingular 2Q Results Support Opportunity for Further Margin Expansion,* at 4 (July 21, 2005).

[53] *See* Viktor Shvets & Andrew Kieley, Deutsche Bank, *VoIP: State of Play* at 9 (June 22, 2005) ("Integrating VoIP calling with wireless capability is the 'holy grail' for VoIP operators, as it is generally viewed as a 'killer application' which could lead to substantially higher demand for the service. With this sort of capability, VoIP usage in the home not only becomes wireless, but could allow users to make free VoIP calls wherever a WiFi connection is available, or to switch off between cellular and VoIP calling using the same handset").

[54] *See* P. Howe, *Comcast Plans Boston Launch of Internet Phone Service*, Boston Globe at E1 (April 14, 2005) (confirming Comcast's plan to offer a new integrated wireless/VoIP service that would provide a cell phone that would convert to an unlimited fixed-price Internet phone inside a subscriber's home).

c. VoIP. In addition to obtaining VoIP service from a cable company, any customer with broadband access – which is now available to more than 90 percent of U.S. households from a provider other than the incumbent LEC[55] – can obtain voice service from multiple independent VoIP providers. Vonage, for example, provides service to more than one million customers and continues to add 15,000 customers per week.[56] Skype, a service that allows customers to make *free* computer-to-computer calls "has now enabled more than 7 billion high-quality minutes of talk time for Skype users worldwide."[57] AOL, the country's largest Internet service provider, and Google are now providing VoIP service,[58] and industry experts expect that other Internet companies will soon follow: "It's pretty evident that you are going to have Yahoo, MSN, Google, all within the next six months, their entry into this marketplace. These guys own the

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[55] *See, e.g.*, NCTA, Industry Overview: Statistics & Resources, *available at* http://www.ncta.com/Docs/PageContent.cfm?pageID=86 (105 million homes passed by cable modem service as of September 30, 2004); *see also* C. Moffett, et al., Bernstein Research Call, Broadband Update: Dial-up Conversion Still Accelerating, with No End in Sight at 9 (Dec. 2, 2004) (as of the end of the third quarter of 2004, cable modem service was available to 95 percent of cable subscribers); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, Third Report, 17 FCC Rcd 2844, ¶¶ 79-88 (2002); *Triennial Review Order*, 18 FCC Rcd 16978, ¶ 263 (2004) ("[T]he Commission also has acknowledged the important broadband potential of other platforms and technologies, such as third generation wireless, satellite, and power lines") (*citing Third Section 706 Report 2002*, 17 FCC Rcd 2844, ¶¶ 79-88 (2002).

[56] Vonage, Fast Facts *available at* http://www.vonage.com/corporate /aboutus_fastfacts.php; Vonage, *Press Release: Vonage Contracts with Verizon for Nomadic VoIP E9-1-1 Service* (May 4, 2005), *available at* http://www.vonage.com/corporate/press_index.php?PR=2005_05_04_0.

[57] Business Wire, *SkypeIn and Skype Voicemail Beta* (Apr. 15, 2005), *available at* http://www.tmcnet.com/usubmit/2005/Apr/1134642.htm.

[58] *See* AOL Press Release, *America Online Introduces AOL® Internet Phone Service* (Apr. 7, 2005), *available at http://media.timewarner.com/media/newmedia /cb_press_view.cfm?release_num=55254366*; Google Press Release, *Google Launches Open, Instant Communication Service* (Aug. 24, 2005), *available at http://www.google.com/press/pressrel/talk.html.*

desktop, and the desktop is the highway out of your house. Anybody who's got real stickiness with their target audience can drop [a VoIP] application right into their code."[59]

Customers also view VoIP service as a replacement for their telephone line. Approximately 50 percent of Vonage customers bring their old phone number when they sign up.[60] And as analysts have noted, third-party VoIP providers offer service "at rates significantly below comparable RBOC prices."[61]

E-mail and instant messaging also displace a significant fraction of traffic that used to travel on wireline networks, including revenue-producing traffic such as long distance calls. If only 5 percent of the estimated nine billion messages U.S. users send each day[62] substitute for a 90-second voice call, that data traffic displaces more than 10

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[59] C. Wilson, *AOL Helps Usher in VoIP's Growth Spurt*, Telephony at 10 (Mar. 14, 2005); Viktor Shvets & Andrew Kieley, Deutsche Bank, *VoIP: State of Play* at 6 (June 22, 2005) (noting that MSN is "currently evaluating a full-fledged VoIP service" and that Yahoo! has introduced a test version of VoIP over instant messaging and has acquired DialPad, a fee-based VoIP provider).

[60] *See* J. Hodulik, et al., UBS Investment Research, *The Vonage Story: The Who, What, Where, and How,* at 5 (Nov. 24, 2003); A. Quinton, et al., Merrill Lynch, *US VoIP Update: Competitive, Regulatory, and Other Issues,* at 9 (Nov. 25, 2003).

[61] Jeffrey Halpern, et al., Bernstein Research Call, *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth,* at 5-6 & Exh. 5 (July 15, 2005); Viktor Shvets & Andrew Kieley, Deutsche Bank, *VoIP: State of Play,* at 7 (June 22, 2005).

[62] *See* K. Thies, *E-mails and Records Management in the Legal Environment*, Legal Tech Newsletter (Nov. 14, 2003) ("Almost 9 billion e-mails are sent every day in the United States"); *see also* B. Silverman, *IM Viruses Are Latest Threat to the Networks*, New York Post (June 13, 2004) ("Almost 80 million Americans use instant-messaging services at home or work, according to an April 2004 Nielsen/NetRatings survey"); E. Stein, *Will IM Pay?*, CFO Magazine (May 2004) ("Radicati Group, a technology market research specialist, reckons there are already 60 million business IM accounts. IM could have as many as 182 million business users by 2007, claims Ferris Research").

percent of the voice traffic that would otherwise have been handled by wireline networks.[63]

Finally, other technologies are poised to become significant competitors for voice traffic. Broadband-over-powerline (BPL), for example, enables users to have access both to high-speed Internet access and VoIP service. This service is just beginning to be commercially offered. As the FCC observed, four utilities began offering BPL to customers in 2004.[64] Moreover, BPL providers are attracting increasing levels of investment. For example, Current Communications, a provider of BPL started by Liberty Media, recently obtained $100 million in funding from Goldman Sachs, Google, and Hearst.[65] The FCC also has now adopted rules designed to "to provide a framework that will both facilitate the rapid introduction and development of BPL systems" and minimize any harmful interference.[66] As it noted, because power lines reach virtually every customer location, "[t]his new technology offers the potential for the establishment of a significant new medium for extending broadband access,"[67] and therefore an additional avenue for obtaining VoIP, "to American homes and businesses."[68]

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[63] Ind. Anal. & Tech. Div., WCB, FCC, *Trends in Telephone Service,* at Table 10.1 (Aug. 2003) (Total 2001 Dial Equipment Minutes of 4.8 trillion divided by 2 yields 2.4 trillion conversation minutes; 246 billion/2.4 trillion = 10.3 percent) (5 percent of 9 billion is 450 million multiplied by 365 days yields 164 billion multiplied by 1.5 (90 seconds) yields 246 billion minutes annually).

[64] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd. 2755 ¶ 133 (2005).

[65] *See* Bill Alpert, *Powerline Promise*, Barron's Online (July 11, 2005).

[66] *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems*, 19 FCC Rcd 21265, ¶ 2 (2004).

[67] *Id.* at ¶ 1.

[68] *Id.*

2. <u>In light of the extensive competition for long distance service, applying outmoded regulations is unnecessary and contrary to the public interest</u>. As the foregoing makes clear, all providers of telephony services, including long distance services, face vigorous and increasing competition. Moreover, even if a BOC decides to reintegrate its long distance affiliate after the section 272 requirements sunset, section 272(e) requires that a BOC provide telephone exchange service and exchange access to competitors and other unaffiliated entities in the same time it provides such services to itself, and further requires that a BOC impute to itself an amount "no less than the amount charged to any unaffiliated interexchange carriers" for such services. 47 U.S.C. § 272(e)(1), (3). In these circumstances, continuing to apply regulations designed for an industry that was entirely different makes no sense and is affirmatively harmful to consumers.

a. <u>Tariffing</u>. The Commission did away with tariffing requirements for long distance services in 1997.[69] The Commission determined that tariffs were not necessary to protect the public interest because competition in the long distance market would prevent carriers from raising prices and from engaging in predatory pricing.[70] As discussed above, since the Commission's determination in that docket, competition has *increased* dramatically, leading to significant price reductions and a wide array of service choices for customers. Accordingly, there is even less reason today to impose tariffing requirements on LEC's long distance services.

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[69] *Regulatory Treatment of LEC Provision of Interexchange Services Originating the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756 (1997) ("*LEC Classification Order*"); *see also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended,* 11 FCC Rcd 20730 (1996).

[70] *LEC Classification Order*, ¶¶ 97, 107.

Indeed, in the *LEC Classification Order* the Commission determined that tariffing would be contrary to the public interest because it could harm competition. The Commission was concerned that tariff requirements might "stifle price competition and marketing innovation."[71] According to the Commission, a requirement to file tariffs "would reduce incentives for competitive price discounting, constrain carriers' ability to make rapid, efficient responses to changes in demand and cost, impose costs on carriers that attempt to make new offerings, and prevent customers from seeking out or obtaining service arrangements specifically tailored to their needs."[72] The Commission also expressed concern that tariffing long distance services could "facilitate tacit coordination of prices" among carriers. And the extensive cost support required in the tariffing process might "discourage the introduction of innovative new service offerings, because it requires a carrier to reveal its financial information to its competitors."[73] These concerns are even more relevant in light of the intensified competition for all telecommunications services, including long distance. Further, as the Commission recognized, imposing tariffing requirements on only a few competitors would not only "impose significant administrative burdens on the Commission and the [BOCs];" it would also "adversely affect competition." *Id.* at ¶ 89. The Commission, therefore, should waive the requirements to file tariffs for interstate long distance services.

b. <u>Price cap rules</u>. As BellSouth points out, price cap regulation does not apply today to providers of long distance services, and no interexchange toll service is subject to price cap regulation. BellSouth Petition at 17. As discussed above, consumers have

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[71] *Id.* ¶ 88.

[72] *Id.*

[73] *Id.*

benefited from extensive innovation, along with price reductions and a wide array of choices that have resulted from the robust competition for long distance services today. Requiring only the BOCs to subject their long distance services to such rules would impose artificial price constraints on a few service providers that would not apply to their competitors. This would affirmatively disrupt the robust competition that exists today, and therefore would be harmful to the public interest. As a result, the Commission should waive its price cap rules to the extent they are interpreted to apply to long distance services provided by BOCs.

c. Accounting rules. As BellSouth explains, the changes that the Commission has implemented to its regulation of interstate services have severed the link between regulatory accounting costs and rates, and have eliminated potential incentives for shifting costs. BellSouth Petition at 21. As a result, no useful purpose would be served by treating integrated interLATA services as nonregulated for accounting purposes. Instead, such accounting treatment would impose burdensome requirements on a few providers of long distance services, which would not be borne by most competitors. Such an asymmetric regulatory requirement would impede robust competition. Accordingly, to the extent the Commission's accounting rules are read to require that integrated interLATA services be treated as nonregulated, they should be waived.

3. The Commission should grant a waiver for all BOCs as their section 272 requirements sunset. As discussed above, competition for all kinds of telephone services, including long distance services, has increased dramatically over the last decade. All providers of long distance services (whether the services are provided separately, as a bundle of local and long distance, or as "all distance" services) must compete in this

changed marketplace, and competition is certainly no less intense in New York or Boston than it is in Atlanta or Charlotte. Indeed, intermodal competitors are national in scope. For example, wireless providers such as Cingular, Sprint Nextel, and T-Mobile compete nationally. Similarly, any customer with a broadband connection – which, as noted above, is now available to more than 90 percent of U.S. households from a provider other than the incumbent LEC – can purchase VoIP services from many different providers including Vonage, Packet8, Lingo, and AT&T.

The Commission has long recognized that competition is the best form of "regulation."[74] Consumers in all parts of the country will benefit from removing outmoded and artificial regulatory handicaps from the BOCs. Conversely, the harm to the public interest that the Commission recognized from imposing tariffing, price cap, and accounting separation regulations on BOCs, but not on other competitors, will result if such regulations are imposed on any of the BOCs, not just BellSouth. The pending acquisition of MCI by Verizon does not change these facts. In light of the extremely competitive nature of long distance services today, that acquisition will not reduce competition, and does not suggest that Verizon should be treated differently from BellSouth after the sunset of section 272 requirements. It makes no sense, therefore, to subject a few service providers to burdensome regulations designed for a fundamentally different era.

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[74] *See, e.g., Access Charge Reform*, 12 FCC Rcd 15982, ¶ 263 (1997) ("Competitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production. Accordingly, where competition develops, it should be relied upon as much as possible to protect consumers and the public interest. In addition, using a market-based approach should minimize the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local telecommunications markets").

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For the foregoing reasons, the Commission should grant BellSouth's petition. The Commission also should waive the specified regulations for all BOCs as their 272 requirements sunset.

Respectfully submitted,

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October 18, 2005

ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers and long distance companies affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance,
NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions,
Verizon Select Services Inc.